



**OFFICE OF THE ATTORNEY
GENERAL
STATE OF ARIZONA**

**INVESTIGATIVE REPORT REGARDING THE
PROCUREMENT PRACTICES OF THE
TUCSON UNIFIED SCHOOL DISTRICT**

**ANTITRUST UNIT
JANUARY 13, 2009**

EXECUTIVE SUMMARY

The Attorney General's Office investigated whether Tucson Unified School District personnel violated state conflict of interest and procurement laws and regulations relating to several procurements beginning in 2004 and continuing through the present. The initial investigation examined procurements and vendor relations involving the District's Technology and Telecommunications Services Department and vendors NVision Networking, Inc., Trillion Partners, Inc., and E-Rate Consulting, L.L.C. The investigation was later expanded to include vendors Promethean, Inc. and Logical Choice Technologies, Inc., based on allegations of additional procurement and conflict of interest violations.

The investigation revealed that:

- Technology and Telecommunications Services personnel had improper contact and communication with prospective vendors before and during competitive purchasing processes;
- The District extensively relied on consultants for technology projects and spent more than \$40,000 for consultants' services that produced no results;
- Two vendors conspired with each other, and with District employees, to ensure each obtained a District contract, harming competition and violating State antitrust laws, the school procurement code and the USAC's E-Rate program rules;
- District personnel circumvented the school procurement code and District policies without consequences;
- District personnel and a vendor split purchases in order to avoid the competitive purchasing requirements of the school procurement code;
- The District spent over \$342,000 on goods and services with absolutely no competitive purchasing process;
- District personnel, including District leaders and key decision makers, accepted gifts and gratuities from current and prospective vendors, including gift cards, meals, and lodging at a Tucson area resort.

Background

In late 2005, the Attorney General's Office (AGO) began investigating allegations that the Tucson Unified School District's (TUSD) Technology and Telecommunications Services (TTS) Director, Guyton Campbell, had violated state procurement laws by giving preferential treatment to a District vendor called NVision Networking, Inc. (NVision). While the AGO was investigating those allegations, the District asked the AGO to review its E-Rate related procurement processes to determine whether Arizona procurement laws and rules were violated with respect to the District's Requests for Proposals (RFP) for Telecommunications Systems, RFP #06-68-11, and Voice, Data and Video Services, RFP #06-69-11.

In May 2008, while the AGO was finalizing its report on these matters, a new complaint was received through the Arizona Department of Education's fraud hotline. This latest complaint alleged that TUSD personnel had violated procurement and conflict of interest laws by accepting gifts and gratuities from a vendor called Promethean.

During our investigation of all three matters, the AGO interviewed market participants and District employees, some under oath, reviewed documents and issued Civil Investigative Demands to third parties.¹ The findings from our investigation are below.

A. Alleged Favoritism Shown To NVision

The original complaint alleged that Guyton Campbell had repeatedly given NVision preferential treatment when awarding high dollar contracts for technology and telecommunications products and services. It also alleged that Mr. Campbell provided one of NVision's owners, Dan Meyer, access to competitive bidding information for the purpose of giving NVision a competitive advantage in winning District contracts. Access was allegedly granted by giving Mr. Meyer unfettered access to Mr. Campbell's office, where such information was out in the open, and by instructing TTS staff member, Mary Veres, to provide Mr. Meyer with a security code to the District's computer system, which would allegedly provide him with access to his competitors' bid information. Also, according to the complaint, before entering a bid evaluation meeting in 2004, Mary Veres remarked that she did not understand why the evaluation committee was even meeting as Mr. Campbell had decided to award the contract for internal network equipment requirements to NVision.

¹ Pursuant to A.R.S. § 44-1406, information and materials obtained from a Civil Investigative Demand must remain confidential unless and until a lawsuit is filed. A lawsuit has been filed in this case, and information produced pursuant to the Civil Investigative Demands has been included in this report.

1. Mr. Campbell Had A Longstanding Relationship With NVision's Owners

Mr. Campbell had known NVision's owners, Dan Meyer and Lindsay Albisani, for several years before accepting the District's TTS Director position in late 2003. In 1994, Mr. Campbell taught Certified Novell Engineering courses for the University of Arizona's Extended University. Lindsay Albisani, who was the Program Coordinator at that time, wrote a letter of recommendation for him in 1994. A copy of Ms. Albisani's recommendation letter is attached at TAB 1.

Dan Meyer also taught courses at the Extended University at the same time as Mr. Campbell. When applying for the Director of Information Technology position at the Arizona State Schools for the Deaf and Blind in 1999, Mr. Campbell listed Dan Meyer as a reference. A copy of Mr. Campbell's application is attached at TAB 2.

2. TTS Employees Considered NVision A Consultant

TUSD staff interviewed during our investigation often referred to Mr. Meyer as Mr. Campbell's or the District's IT consultant. One of his previous employers stated that Mr. Campbell's technical expertise was often questioned by staff and he preferred to discuss technical projects with Mr. Meyer instead of his own technology staff. TTS staff interviewed in our investigation concurred with this assessment. Before he began working at the District, Mr. Campbell brought Mr. Meyer to meetings with the District's TTS staff to discuss the District's IT needs and plans. This mindset among TTS employees, that NVision was the District's IT consultant, may have contributed to TTS staff's improper communication with NVision when applying for E-Rate funds in January 2004.

3. The District Violated USAC Requirements And State Procurement Law During The 2004 E-Rate Application Process

A complaint received by our Office alleged that in January 2004, Mary Veres and Guyton Campbell gave NVision access to competing vendors' bid information so that NVision could adjust its bid accordingly. According to the complaint, Mary Veres gave Dan Meyer a computer password that would allow him to view competitors' bids who were also trying to win District contracts to provide E-Rate eligible products and services. Our findings are below.

a. E-Rate Program Background

"E-Rate" is the Schools and Libraries Program of the Universal Services Fund, which provides funding for schools and libraries to obtain affordable telecommunications and Internet access. The Universal Service Administrative Company (USAC), under the direction of the Federal Communications Commission, administers the "E-Rate" program and has established rules and

processes that applicants must follow to obtain Universal Services funding or discounts. USAC's overview of the E-Rate program is attached at TAB 3.

Applicants for E-Rate funds must follow the following five step process:

1. First, the applicant must prepare and obtain approval of a technology plan, which describes how technology will be used to achieve specific curriculum reforms and library improvements.²

2. Second, the applicant must open the competitive bidding process by filing with USAC a Form 470 Description of Services Requested and Certification Form (470). USAC posts the 470 on its website to notify vendors that the applicant is seeking the products and or services identified in the 470. Applicants are required to wait 28 days after the 470 is posted before selecting a service provider, and must utilize "an open and fair competitive bidding process." See E-Rate program overview attached at TAB 3 and USAC's Form 470 information attached at TAB 4.

3. After selecting vendor(s) utilizing a competitive purchasing process, the applicant files a Form 471 with USAC. The Form 471, Services Ordered and Certification Form, is the applicant's actual request for funding.

4. The applicant files a Form 486 with USAC certifying that the requested services or products have been provided and the vendor(s) can be paid.

5. If the applicant pays the selected vendor(s) in full for the services or products provided, the applicant submits Form 472 to USAC for reimbursement. If the applicant receives a discount off its bills from the service provider, the service provider submits Form 474 to USAC to receive reimbursement.

b. District's Application Process

In January 2004, the District applied for E-Rate funds/discounts. The District posted its Year 7 (July 2004-June 2005) Data Networking Equipment Needs and Infrastructure Requirements on the District's E-Rate web site at www/tusd.k12.az.us/erate.asp. Copies of the postings are attached at TAB 5. Several vendors, including NVision, sought contracts to provide the District's requested E-Rate eligible services and products.

The District employed some sort of competitive procurement process for the products and services it wished to obtain with Year 7 E-Rate funds, but the type of competitive purchasing process is unclear. Vendors submitted proposals and an evaluation committee met on February 3, 2004. Mary Veres testified in her Examination Under Oath (EUO) that the process "wasn't an official RFP

² In Arizona, the Department of Education approves school districts' technology plans.

process. That it was just an evaluation. In other words, the actual contract that we were supposed to be utilizing were contracts from previously awarded RFPs. We didn't go through an RFP process at that time." See Veres EUO testimony at TAB 6. Ms. Veres testified that the vendors submitted proposals pursuant to the District's Form 470 and the evaluation process related to vendors who had already been awarded state or District contracts.

c. Improper Communication With And Selection Of NVision

Our investigation revealed that in a January 16, 2004 e-mail, Mary Veres gave Dan Meyer and Lindsay Albisani a computer security code to access the Form 471 she was completing. See e-mail attached at TAB 7. By doing so, she did not give them access to NVision's competitors' bid information, but she did give them access to the District's E-Rate application for contracts the District wished to award to NVision.³

Ms. Veres began working on the Form 471 on January 16, 2004 as evidenced by the "Create Date" field in Block 1⁴ and her e-mail⁵ requesting NVision's SPIN number.⁶ During her EUO, Ms. Veres stated that she had no experience in applying for E-Rate funds. See Veres EUO testimony at TAB 9. She also testified that she felt comfortable asking NVision for assistance in completing the Form 471 because she considered NVision a District consultant, and at the time she did not consider it improper to contact a bidder for advice during the bidding process. See Veres EUO testimony at TAB 10.

Pursuant to USAC requirements, applicants must wait 28 days after their Form 470 is posted to the USAC website or they have issued an RFP before selecting a vendor or executing a contract.⁷ See TAB 3. The District's 28-day waiting period expired on February 2, 2004.⁸ Ms. Veres' work on the 471 on January 16 and her e-mail of the same date suggests that the decision to award the District's E-Rate contracts to NVision had been made long before the evaluation committee met or the District, pursuant to USAC rules, was permitted to choose a vendor.

In her EUO, Ms. Veres testified that the 28-day window had expired before she began working on the document. This testimony is unpersuasive when compared with the surrounding facts. As indicated in Block 5, field 17 of the

³ A copy of the Form 471 application Ms. Veres gave NVision access to is attached at TAB 8.

⁴ See TAB 8.

⁵ See TAB 7.

⁶ A SPIN number is the number SLD assigns vendors providing E-Rate services or products and it must be provided in the 471 application. See Field 13 of Block 5 at TAB 8.

⁷ The purpose of this "28-day window" is to permit competitive purchasing processes, which are required for obtaining E-Rate funds, to occur. USAC requires applicants to comply with all applicable state and local procurement rules and competitive bidding requirements.

⁸ See TAB 8, Block 5, field 17.

Form 471, the 28-day window expired on February 2, 2004—seventeen days after Ms. Veres began working on the Form 471. Also, the District's evaluation committee did not meet until February 3—signifying the District's recognition that it could not award a contract prior to the expiration of the 28-day window.

Ms. Veres testified that her work on the Form 471 was essentially practice as she was only trying to figure out how to complete the Form 471 so that she would be ready to submit it to USAC when the District actually selected a vendor. Even if, as Ms. Veres claims, she were simply trying to figure out how to complete the Form 471, she did not need to indicate that NVision was the selected vendor or need to input NVision's Spin number.

Ms. Veres then testified that she never submitted this practice application to USAC. The facts also belie this testimony. The Form 471 Ms. Veres prepared was assigned an application number—400089.⁹ USAC's March 24, 2005 Funding Commitment Decision Letter¹⁰ shows that application number 400089 was, in fact, submitted and rejected by USAC because the District did not follow USAC's procedures.¹¹

4. Preferential Treatment In Awarding Contracts To NVision

NVision had been a District vendor long before Mr. Campbell became the TTS Director. From July 1, 1999 through October 2003, approximately four and a half years, the District's NVision expenditures totaled \$771,805 or, on average, \$171,512.22 per year. The District's expenditures on NVision products and services greatly increased after Mr. Campbell's arrival in November 2003. From November 2003 through August 29, 2005, less than two years, the District paid \$949,835.94 or an average of \$474,917.97 per year to NVision. See payment detail attached at TAB 12.

5. The District Paid NVision For Work It Did Not Perform

On at least one occasion, Mr. Campbell authorized payment to NVision for work it did not perform. On April 20, 2005, Mr. Campbell authorized payment of \$1,796.37 to NVision for two firewalls and their installation on computers located in his home and that of another District employee.¹² The District received the

⁹ See TAB 8. The third line of Block 1 indicates the 471 application number is 400089.

¹⁰ Attached at TAB 11.

¹¹ USAC rejected the District's application because the District violated the mandatory 28 day waiting period. The violation cited by USAC is different than the one described above, however. In the application, Ms. Veres indicated that the contract award date was October 1, 2001, which obviously precedes the allowable contract date of February 2, 2004. See TAB 8, Block 5, field 18. Identification of the October 1, 2001 contract date tends to corroborate Ms. Veres' testimony that the District's RFP process was for the purpose of selecting among vendors already awarded District or State contracts.

¹² A copy of NVision Invoice # 3933, with Mr. Campbell's authorization for payment, is attached at TAB 13.

firewalls, but NVision never installed them. On October 17, 2005, Deborah Edgell, the Director of Purchasing, instructed Rudy Flores, TTS's Assistant Director, to ask NVision for a \$1,000 credit. See e-mails attached at TAB 14.

Also, in April 2004, the District purchased access layer switches and points for Tucson High School's wireless network, along with installation and training from NVision. Despite paying NVision nearly \$150,000 for the equipment, installation and training, the District stored the access switches in its vault for more than a year.¹³ TTS employees told our Office that although NVision was paid \$3,500 for installation and training, NVision did not install the access points or provide training because the District did not have the server required for the installation of software and configuration of an IDS security box.

6. The District's Auditors Recommended That All Future Procurements Go Through The Purchasing Office

Based upon certain TTS employees' expressed concerns of favoritism shown to NVision, District management asked the District's auditors Heinfeld, Meech & Co. to review the 2004 E-Rate application process. Heinfeld & Meech examined the District's procurement files and found five deficiencies in the District's documentation. The auditors did not examine the alleged favoritism shown to NVision. Heinfeld & Meech suggested that all future procurements be made through the Purchasing Department where internal controls could insure compliance with the Procurement Code. See November 15, 2005 letter from Heinfeld & Meech attached at TAB 16. As evidenced below, the District's Procurement Code violations continued even after receipt of the auditors' letter.

B. Trillion, E-Rate Consulting, And The District's Year 9 E-Rate Process

In January 2006, the District published Requests for Proposals for Telecommunications Services (RFP #06-68-11) and Voice, Data and Video Services (RFP #06-69-11). The District's evaluation committee recommended that the Board award several vendors contracts pursuant to each RFP. During the Board's evaluation, it was revealed that the owner of E-Rate Consulting Services, Inc. ("ERC"), the vendor hired to conduct the District's Return on Investment Analysis ("ROI"), had an undisclosed familial relationship with an owner of Trillion,¹⁴ one of the vendors the evaluation committee recommended

¹³ See copies of invoices and pictures of the stored access points, taken in or around May 2005, attached at TAB 15.

¹⁴ Prior to February 16, 2006, there were two "Trillions": Trillion Digital Communications, Inc., located in Bessemer, Alabama, and Trillion Partners, Inc., located in Austin, Texas. All references in this report relate to Trillion Partners. The alleged familial relationship was between Harry Slaughter of Trillion Digital Communications, with whom the District did not contract, and his estranged brother Jon Slaughter, the Chief Executive Officer of ERC. Trillion Digital Communications had numerous financial problems and sold the business to Trillion Partners, with whom it was loosely affiliated, in February 2006. The AGO did not uncover any evidence that ERC and Trillion Digital Communications had any communications regarding the District's project.

for the award of a contract. The Board also received information that Trillion and ERC were "e-Partners" according to ERC's website.¹⁵ The District asked the AGO to review its procurement process to determine whether state procurement laws or regulations had been broken. We have concluded that procurement laws and rules were broken, but not for the reasons originally alleged.

1. Formation Of TUSD/Trillion Relationship

On October 4, 2005, a Trillion salesman named Gary Gaessler requested a meeting with Mr. Campbell and Mr. Flores to discuss materials he had dropped off regarding Trillion's wide area network ("WAN") products and services. Mr. Campbell responded the same day. See e-mail exchanges attached at TAB 18. Messrs. Campbell, Flores, Gaessler and Roger Clague, Trillion's Vice-President of Sales, met for lunch the following day, splitting the check, to discuss the District's technology needs and the services Trillion had to offer. On October 10, 2005, Mr. Gaessler sent additional materials regarding Trillion projects to Messrs. Campbell and Flores. He also asked for a meeting to further discuss the District's WAN vision. See e-mails attached at TAB 19.

Trillion and District employees next met at the NSBA Technology and Learning Conference in Denver. On October 27, 2005, Superintendent Pfeuffer, Mr. Campbell and Mr. Flores met with Bear Poth, Trillion's Chief Executive Officer, Steve Davis, its Vice President of Operations and Technology, and Mr. Gaessler for breakfast, splitting the check. See e-mails attached at TAB 20. That evening, ten to fifteen District employees, including Superintendent Pfeuffer, Mr. Campbell, Mr. Flores, Director of Educational Technology Lisa Long and others, attended a private dinner hosted by Trillion at a restaurant called Tamayo. See e-mails at TAB 21, Flores and Campbell EUO testimony at TAB 22, and Trillion expense reimbursement paperwork at TAB 23, respectively. During dinner, Trillion and District personnel discussed the District's technology needs and wants. Trillion paid \$621.04 for the dinner, after obtaining leave to do so from Superintendent Pfeuffer. Attendance at this dinner by District personnel, including the Superintendent and other key decision-makers, violated the District's policy on vendor relations and Arizona's conflict of interest statutes.¹⁶

On November 3, 2005, Mr. Gaessler requested another meeting with Messrs. Campbell and Flores to discuss the District's preliminary WAN design. Then on November 8, 2005, Mr. Gaessler sent an e-mail to Superintendent Pfeuffer, Mary Veres, and Martha Peyton, inviting them to an E-Rate Consulting hosted dinner at a Scottsdale restaurant. This dinner was being held in conjunction with a Phoenix e-rate seminar jointly sponsored by Trillion and ERC. A copy of the invitation is attached at TAB 24.

¹⁵ Copies of website printouts showing this e-Partner relationship between Trillion and ERC are attached at TAB 17.

¹⁶ District Policy GBEAA and A.R.S. § 38-504(c) prohibit the acceptance of meals/gifts from current or prospective vendors.

After a series of e-mails where Mr. Gaessler and Mr. Flores discuss site lists and the City of Tucson's fiber lines and connections, on November 9, 2005, Mr. Gaessler informed Mr. Flores and Mr. Campbell that Trillion had started working on the District's preliminary WAN network design draft. See e-mails at TAB 25. At that point the District had not yet begun its procurement process; in fact, the District's WAN RFP was not issued until two months later.

On November 10, 2005, Mr. Gaessler sent an e-mail to Mr. Campbell in which he stated he would be sending introductions to three independent consulting firms that could manage the District's ROI project.¹⁷ In that e-mail, Mr. Gaessler provided contact information for Trillion's e-partner E-Rate Consulting (ERC), but he did not inform the District that Trillion and ERC were e-Partners. Four days later, Mr. Gaessler provided contact information for Public Sector Consultants. He sent no other introductions. See e-mails attached at TAB 26.

The following week, on November 17, 2005, Mr. Flores and Martha Peyton, Mr. Campbell's administrative assistant, met Mr. Gaessler for lunch, splitting the check. By November 23, 2005, Trillion had created a preliminary WAN design for the District, which Mr. Gaessler e-mailed to Mr. Campbell, Mr. Flores and Ms. Peyton. See TAB 27.

Sometime before December 7th, Mr. Gaessler e-mailed a list of fiber questions to the District. See TAB 28. Then on December 7, 2005, Mr. Gaessler and Mr. Davis, along with Mr. Vasili Triant from ShoreTel,¹⁸ met with Messrs. Flores and Campbell for a demonstration of the ShoreTel IP products and to review the fiber questions and the preliminary WAN design. On December 14th and then again on December 16th, Mr. Gaessler e-mailed Martha Peyton asking to set up lunch or dinner meetings with Messrs. Campbell and Flores to discuss any comments on Trillion's preliminary WAN design. See e-mails at TAB 29. The following week, on December 21, 2005, Mr. Gaessler and Roger Clague had a breakfast meeting with Mr. Flores. See e-mails attached at TAB 30.

2. Formation Of The TUSD/ERC Relationship

a. Procurement Of ERC's Services For The ROI Analysis

On November 23, 2005, TTS issued a Solicitation for Written Price Quotations (the "Solicitation") for consulting services related to the ROI project.¹⁹

¹⁷ According to Mr. Flores' testimony, TTS was hiring a consultant to conduct a return on investment analysis (ROI) for the District's technology needs because certain Board members were not convinced that the District needed to overhaul its WAN, LAN and telecommunications systems. Mr. Flores claimed the Board had instructed TTS to perform the analysis at a Board meeting in the Fall of 2005.

¹⁸ Trillion was heavily promoting ShoreTel, a telephone equipment provider.

¹⁹ Pursuant to A.R.S. § 15-213, the State Board of Education has adopted rules prescribing procurement practices applicable to all school districts within the State, which specify

Responses were due November 30, 2005, only one week later.²⁰ Although TTS employees claim they sent the Solicitation to several companies, documents the District produced to the AGO show that the Solicitation was only sent to three companies: ERC, Public Sector Consultants and Salire. See TAB 31. Mr. Gaessler had introduced TUSD to both ERC and Public Sector Consultants less than two weeks earlier. See TAB 26.

ERC and Public Sector Consultants submitted written price quotations by the November 30th deadline. The District had no record of receiving Salire's price quote.²¹ ERC's quotation was \$29,200. Public Sector Consultants' quotation was \$45,675. Even though the District had only obtained two quotes, Mr. Flores testified that TTS notified ERC immediately that its bid was accepted and that ERC began working on the District's ROI analysis by December 9, 2005. See Flores EUO Transcript at TAB 32.

Messrs. Campbell and Flores met with Dan Kettwich, ERC's Project Manager, on December 13, 2005. On that same date, Mr. Campbell had a conference call with Jon Slaughter, ERC's Chief Executive Officer. The very next day, Mr. Campbell had a web meeting with Mr. Slaughter. By December 16, 2005, Mr. Kettwich was making plans for a site visit, along with fellow ERC employees Tom Numbere Jr. for the ROI analysis and Sue Kissell for E-Rate services, and had sent Messrs. Campbell and Flores a list of background and technical questions for the ROI analysis. See e-mail attached at TAB 33. On December 28, 2005, Mr. Kettwich forwarded ERC's Professional Services Agreement for the ROI analysis to the District. See e-mails attached at TAB 34.

the total cost of a procurement that is subject to invitations for bids and requests for proposals. The Department of Education's Rules for School District Procurement are found in the Arizona Administrative Code (A.A.C.) at A.A.C. R7-2-1001 et seq. Pursuant to A.A.C. R7-2-1002, school district procurement rules require competitive sealed bids or competitive sealed proposals, but for a few enumerated exceptions, for every expenditure of public monies made by a school district for the procurement of construction, materials and services over \$33,689 (threshold amount). School districts must follow the Uniform System of Financial Records (USFRs) prescribed by the Auditor General for purchases under the threshold amount. See A.R.S. § 15-271(C)(3). The USFRs require school districts to obtain price quotations from at least three vendors, oral price quotes for purchases between \$5,000 and \$14,999, and written price quotes for purchases between \$15,000 and the threshold amount (\$33,689). See USFR section VI-G-8-9. Except for a lower threshold amount triggering competitive sealed purchasing (\$30,000), TUSD's Policy DJ mirrors the USFRs' requirements for competitive purchasing below the threshold amount.

²⁰ The USFRs require that "the invitation for price quotes should be issued in sufficient time before the purchase is to be made and in sufficient detail to allow vendors to adequately respond." See USFR section VI-G-9. TTS's issuance of the Solicitation the day before Thanksgiving, with only a week to respond, arguably violates this requirement.

²¹ Salire claims to have timely submitted a quotation, but could not produce a copy of the submitted quotation or proof that it was sent or received by November 30, 2005 in response to the District's or the AGO's request.

On December 22, 2005, thirteen days after ERC began working on the ROI project, Martha Peyton e-mailed Salire requesting a "no quote" so the District could "move ahead with a consultant."²² Salire replied by stating it had sent the quote to the District, but the person responsible for sending the quote was on an airplane and could not send another copy right away. The e-mail continued: "If you would like him to respond tomorrow he can do that, but if you have selected another firm then there is no need to respond." Even though ERC had already begun performing the analysis, Mr. Flores e-mailed Salire asking if anyone else at Salire could respond that day. See e-mails attached at TAB 35.

Mr. Flores and Mr. James Szmack from Salire spoke about the ROI Solicitation on or around December 27, 2005.²³ When Mr. Szmack asked whether Salire still had the opportunity to submit a proposal, Mr. Flores asked him to do so. According to Mr. Flores, Salire gave him an oral quotation of \$35,000. Mr. Flores also claimed that when he remarked that the District had received a lower quotation, Salire cut its quote in half to \$17,500, which matches the written quotation Salire submitted on approximately December 28, 2005.

In an interview with our office, Mr. Szmack stated that Salire's initial quotation was \$17,500. He did not reduce the bid amount in response to any comment from Mr. Flores. According to Mr. Szmack, Mr. Flores was "very professional" and did not mention any other vendor's quotation. When Salire submitted its written quotation, it had no idea the contract had already been awarded to another vendor and that it had no chance of winning the District work.

On December 29, 2005, Rudy Flores prepared a decision memorandum to TUSD Purchasing Services regarding the selection of an ROI vendor. A copy of this memorandum is attached at TAB 36. The memorandum states that the decision to select ERC was made after reviewing the written quotations from all three vendors, which were attached. In the memorandum, Mr. Flores states that TTS selected ERC, the mid range quote (\$29,200), over Salire, the lowest quote (\$17,500) for three reasons: 1) Salire did not submit its written quotation by the November 30 deadline, 2) Salire had questionable quoting practices (because its written quotation was half of its initial oral quotation), and 3) Salire's affiliation with CISCO Systems might produce a biased analysis.²⁴ These justifications are suspect, however, because TTS had already notified ERC that it had won the job and ERC had begun working on the analysis almost three weeks before TTS received Salire's quotation and Mr. Flores prepared the memorandum.

²² The USFR requires that if fewer than three quotations are submitted, the District must contact the non-submitting vendors and request a "no quote" documenting the reasons the vendors did not submit quotes. See USFR section VI-G-8.

²³ Mr. Flores recalls the conversation occurring on December 29, 2005. Mr. Szmack recalls the conversation occurred on December 27, 2005.

²⁴ The Solicitation did not identify any selection criteria that would serve to exclude CISCO affiliated vendors.

b. The ROI Procurement Violated The USFRs And District Policy

The District violated USFR requirements and District policy when it awarded the ROI contract to ERC. The USFRs and District Policy require TUSD employees, at a minimum, to obtain written price quotations from at least three vendors for purchases between \$15,000 and \$30,000. If fewer than three quotations are submitted, the District must document the vendors contacted and the reasons those vendors did not submit quotes. The USFRs²⁵ and District policy²⁶ also require the requisitioning department to prepare a purchase requisition and purchase order before ordering a vendor's products and services.

In this case, only two price quotations had been obtained when the District awarded the ROI contract to ERC. It was not until thirteen days after ERC was awarded the contract that the District contacted the third vendor, Salire, seeking a "no quote." Moreover, when Mr. Flores spoke with Mr. Szmack at Salire, he did not inform him that the District was only seeking a "no quote" or that the contract had already been awarded. Instead, he improperly permitted Salire to submit the third price quote weeks past the submission deadline.

Also in violation of the USFRs and District policy, TTS did not prepare a requisition or a purchase order until the end of December, more than two weeks after ERC had begun working on the ROI analysis. The District should not have permitted ERC to begin work until it had received all three quotes and had completed the required requisition and purchase order.

In his memorandum, one of the reasons Mr. Flores offers for not selecting Salire as the low bidder is that the written price quote received (\$17,500) was half of what Mr. Szmack had originally quoted to him on the telephone (\$35,000). This presents a Hobson's choice for the District. If Salire's price quote was, in fact, \$17,500, then it was the low bid and should have been awarded the ROI contract, but for the problem of missing the submission deadline. Alternatively, if Salire's price quote was actually \$35,000, then the District should have recognized that the ROI solicitation exceeded the threshold limit of \$30,000. The other two quotes were \$45,675 from Public Sector Consultants, and \$29,200 from ERC (only \$800 below the threshold limit). With two of the three quotes well over \$30,000, and the third one sneaking in just below the limit, the District should have cancelled the entire solicitation and issued an RFP. In his EUO testimony, Mr. Flores acknowledges that Salire's high telephonic quote (\$35,000) would have required an RFP. See Flores EUO testimony attached at TAB 37.

²⁵ Section VI-G-2.

²⁶ Governing Board Policy DJ states in bold, italic type: *The Purchasing Department must issue a purchase order before materials, services or construction are ordered.*

c. Procurement Of ERC's E-Rate Consulting Services

On November 30, 2005, along with ERC's quote for the ROI analysis, Mr. Kettwich's e-mail included the following statements: "Remember we perform E-rate Consulting Services. If we are awarded this opportunity I can offer a 15% discount on our Forms Processing Service." See e-mails attached at TAB 38. The very next day, on December 1, 2005, Mr. Flores e-mailed Ms. Edgell, Mr. Campbell and Ms. Peyton with scope and criteria language for a proposed E-Rate Consulting Services and E-Rate Consulting RFP.

A procurement document was then prepared. It was entitled a Request for Proposal, with a prospective bidders' list showing four vendors, including ERC, and a submission deadline of December 14, 2005. See TAB 39. It did not, however, meet the School Procurement Code's requirements for RFPs. See A.A.C. R7-2-1042. Mr. Flores testified that the document was more of an exhibit than a formal RFP, and that it was never used to procure any services. See Flores EUO testimony attached at TAB 40. He testified that this document was later used by TUSD's purchasing department to prepare RFP #06-65-10, which was not posted until on or after January 25, 2006.

Nonetheless, on December 15, 2005, the day after the submission deadline in that procurement document, Mr. Kettwich e-mailed his appreciation to Messrs. Campbell and Flores for their decision to allow ERC to handle TUSD's Year 9 E-rate processing services. See e-mail attached at TAB 41. In that same e-mail, Mr. Kettwich promised to forward an invoice for \$4,848.48.

ERC began work immediately on the District's E-Rate project. On December 16, 2005, Mr. Kettwich e-mailed Messrs. Campbell and Flores with his plans to bring ERC's Sue Kissell to the District the following week to focus on E-Rate services and to interview key personnel. See e-mail attached at TAB 33. Mr. Kettwich had an E-Rate meeting with Messrs. Campbell and Flores on December 20, 2005. Then on January 4, 2006, Mr. Kettwich e-mailed ERC's E-Rate Processing Services Contract to Mr. Campbell and Ms. Peyton, noting two time sensitive issues – the deadline for filing the District's Form 470s and the proposal process for cumulative District purchases in excess of \$30,000. See e-mail attached at TAB 42. This latter issue appears to have been a concern regarding whether ERC's invoices for E-Rate services would, either separately or combined with its ROI invoices, exceed the procurement threshold.

Mr. Kettwich met with Mary Veres on or about January 6, 2006, in preparation for generating the District's Form 470s and any RFPs that would need to be created and posted by USAC's January 16, 2006 deadline. See e-mail attached at TAB 43. Copies of the Form 470 shells created by ERC are attached at TAB 44. Following that, there are a series of e-mail communications between ERC and the District regarding the three pending RFPs (#06-68-11 – Telecommunication Services; #06-69-11 – Voice, Data and Video Services; and

#06-65-10 – E-Rate Consulting Services), demonstrating the extent of ERC's involvement with processing the USAC forms and drafting the RFPs and the addendums. That involvement included providing drafts of part or all of the RFP documents,²⁷ suggesting changes to the RFPs,²⁸ developing the prospective vendors' lists,²⁹ and assisting with responses to vendor questions.³⁰

On February 16, 2006, ERC filed the District's USAC Form 471. Then on February 25, 2006, ERC submitted an invoice for \$9,895 for its Year 9 E-Rate services. A copy of this invoice is attached at TAB 49. On or before March 28, 2006, Mr. Campbell authorized payment of ERC's invoice, and the District paid ERC \$9,895 in April 2006. See e-mail attached at TAB 50. On May 4, 2006, ERC submitted another invoice for \$3,000 for E-Rate 471 Selective Review. See TAB 51. According to Pat Beatty, TUSD's Executive Director of Financial Services, the District did not pay this \$3,000 invoice since apparently no services were rendered in connection with it. See Beatty EUO testimony at TAB 52.

d. The E-Rate Consulting Procurement Violated The USFRs And District Policy

TTS violated the USFRs and District policy when it submitted Vendor Requisition number 504160163 for ERC in the amount of \$9,895. First, TTS did not engage in the required competitive purchasing before awarding the E-Rate services contract to ERC. Second, TTS authorized ERC to perform the work long before it submitted a purchase requisition or purchase order for approval. Finally, ERC submitted a conditional bid.

As explained above, the USFRs and District Policy require, at a minimum, oral price quotations from at least three vendors for purchases between \$5,000 and \$14,999.99. For purchases totaling \$15,000 to \$30,000, District employees are required to obtain written price quotations from at least three vendors. Once the price quotes are obtained, the USFRs and District policy require the requisitioning department to prepare a requisition and purchase order before actually ordering the products and services from the selected vendor.³¹

TTS ignored these requirements when it awarded ERC the E-Rate services contract to prepare and file the District's Year 9 E-Rate applications. As early as December 15, 2005, it appears that Guyton Campbell authorized ERC to file the District's E-Rate applications. See e-mail at TAB 41 in which Mr. Kettwich thanks Mr. Campbell for deciding to allow ERC to handle the District's Universal Services Processing contract. TTS made no efforts to obtain three price quotes or otherwise ensure competitive purchasing prior to awarding this contract to ERC, nor did TTS issue a purchase requisition before the work began.

²⁷ See TAB 45.

²⁸ See TAB 46.

²⁹ See TAB 47.

³⁰ See TAB 48.

³¹ See USFR Section VI-G-2 and District policy DJ.

In his December 15, 2005 e-mail, Mr. Kettwich states that he would be submitting an invoice for \$4,848.48, approximately \$150 below the threshold for requiring three price quotes. In fact, the actual price invoiced was much higher. On February 25, 2006, ERC submitted an invoice to the District for \$9,895. See TAB 49. The amount of this invoice is well within the range requiring oral price quotes from at least three vendors. Pat Beatty testified that when a requisitioning department is in the middle of a cumulative purchase and realizes the amount will exceed the purchase limit, the department must still follow the procurement procedures and obtain the necessary quotes to show the selected vendor has the lowest quote. See Beatty EUO testimony at TAB 52. ERC then submitted an additional invoice for \$3,000 for related E-Rate services. See TAB 51. On May 9, 2006, Pat Beatty requested a new requisition from TTS for the total amount of \$12,895 and after-the-fact procurement documentation. See TAB 53.

Finally, ERC appears to have improperly conditioned its E-Rate quote on TTS awarding it the ROI contract. In his November 30, 2005 e-mail submitting the ROI quote, Mr. Kettwich stated, "Remember we perform Erate Consulting Services. If we are awarded this opportunity I can offer a 15% discount on our Forms Processing Service." See TAB 38. It violates State law to submit bids conditioned on second contracts being awarded. "Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another school district contract shall be deemed nonresponsive and unacceptable." See A.A.C. R7-2-1003(B).

e. ERC And TTS Divided ERC's Contracts To Avoid School Procurement Code Requirements

Under District Policy DJ-R, a requisitioning department is directed to aggregate all known or anticipated purchases of similar items or services from a single vendor in order to determine whether to proceed under the school procurement code or the USFR requirements. Contracts splitting up work for the purposes of evading competitive purchasing requirements are invalid.³²

The ROI analysis contract, awarded on December 9th, was for \$29,200. The E-Rate services contract, awarded six days later on December 15th, was originally \$4,848 but ERC actually invoiced \$9,895. Considered separately, these two contracts each violated the USFRs, making the District subject to penalty only through the State Board of Education, per A.R.S. § 15-272.³³ Because both contracts were for related services from a single vendor, they

³² A.R.S. § 15-213(C) provides: "No project or purchase may be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed by the state board under subsection A of this section." See also *Secrist v. Diedrich*, 6 Ariz. App. 102, 430 P.2d 448, 451 (1967); Ariz. Atty. Gen. Ops. 180-015 and 182-010.

³³ USFR requirements are enforced by the State Board of Education, which is authorized to withhold up to ten percent of a school district's state aid until the district complies with the USFRs. See A.R.S. § 15-272.

should have been aggregated for procurement purposes. Together, these two contracts totaled \$39,095, well above the threshold requiring sealed bids or proposals. Mr. Campbell, Mr. Flores, and ERC knowingly divided ERC's contracts to avoid the stricter competitive purchasing requirements of the school procurement code. In so doing, they violated A.R.S. § 15-213(C).

There was no reasonable basis for dividing these contracts since ERC's services were interrelated. The ROI analysis contract required ERC to evaluate the District's technology and determine whether to move forward to WAN and VoIP implementation. The E-Rate services contract required ERC to draft the E-Rate applications and the RFPs for WAN and VoIP implementation. In an interview with our office, Mr. Flores admitted that it was not possible to separate ERC's activities. When asked how much of the contract funds allocated to the ROI analysis actually went to pay for ERC's E-Rate services, Mr. Flores responded that the services were "all wrapped in. Everything blend[ed] together."

Mr. Campbell, Mr. Flores and ERC all knew early on that the ROI analysis and E-Rate services should be aggregated for procurement purposes. When ERC first started the ROI analysis, Mr. Campbell and Mr. Flores asked the District's Purchasing Department whether TTS could have ERC perform the E-Rate services as well. They were told that if the combined total of both contracts exceeded \$30,000, TTS would have to issue an RFP. Since the combined total would undoubtedly exceed the threshold, Mr. Flores began drafting an RFP,³⁴ but ERC did not feel there was enough time to complete that process. See Flores EUO testimony at TAB 54.

Pat Beatty testified that Mr. Flores originally submitted two purchase requisitions seeking separate blanket purchase orders (one for the ROI analysis and one for E-Rate services), each payable to ERC, each in the amount of \$29,200. See Beatty EUO testimony at TAB 55. She told Mr. Flores that he could proceed with one of the purchase orders, but that the other purchase would have to go through an RFP, since together they would exceed the procurement threshold. See Beatty EUO testimony at TAB 55.

ERC was aware of this issue, as evidenced by subsequent e-mails asking about the District's budget process. See TAB 42. Mr. Flores testified that there were discussions with ERC about exceeding the \$30,000 threshold for the ROI analysis and the E-Rate services. See Flores EUO testimony at TAB 56.

Even though they had been told that the contracts should be aggregated and because the contracts exceeded the \$30,000 threshold, TTS would have to issue an RFP, ERC and Messrs. Campbell and Flores decided to ignore the advice of the Purchasing Department and the statutory directive of A.R.S. § 15-213(C) and split the contracts to avoid going through the procurement process.

³⁴ On or about January 25, 2006, an RFP was issued but it was not for Year 9 E-Rate Services and did not apply to the E-Rate services contract awarded to ERC.

3. The 2006 E-Rate Application Process And The District's RFPs

In January 2006, the District prepared three E-Rate program RFPs: RFP #06-68-11 -- Telecommunication Services; RFP #06-69-11 -- Voice, Data and Video Services; and RFP #06-65-10 -- E-Rate Consulting Services.

RFP #06-68-11, Telecommunication Services, was issued on January 13, 2006. The submission deadline was February 10, 2006. In this RFP, the District sought to purchase Telecommunication Services and Maintenance. The RFP was posted on the District's website and copies were sent to 72 vendors. The District received six responsive proposals. The evaluation committee recommended contracts be awarded to Qwest Communications and Shared Technologies, Inc. Two of the three members of the evaluation committee were Rudy Flores and Lisa Long. See Board Packet attached at TAB 57. In an interview conducted by the AGO, Mr. Flores stated that Dan Kettwich of ERC assisted the evaluation committee in making its vendor recommendations.

RFP #06-69-11, Voice, Data and Video Services, issued on January 13, 2006, sought proposals for a District-wide IP communications system, including LAN and Wireless LAN Infrastructure, WAN Infrastructure, IP Telephony, Unified Messaging, Videoconferencing, Category 6/GB Fiber Structured cabling plant, and a 5-year Basic Maintenance Agreement. The RFP was posted on the District's website and copies were sent to 100 vendors. The submission deadline was February 10, 2006. The District received sixteen responsive proposals, and the evaluation committee recommended contracts be awarded to six companies, including Trillion. Two of the three members of the evaluation committee were Rudy Flores and Lisa Long. See Board Packet attached at TAB 58. Mr. Flores and Ms. Long were present at the Trillion-hosted Tamayo dinner in Denver. According to Mr. Flores, Mr. Kettwich also assisted the evaluation committee with making its vendor selections for this RFP.

RFP #06-65-10, E-Rate Consulting Services, was prepared in early January, along with the other RFPs, but it was not posted until on or after January 25, 2006. The selection committee did not meet to review the proposals until some time in March 2006. With this RFP, the District sought future E-Rate consulting services. The contract was awarded to the Miller Institute / Learning Tech. This RFP did not cover those services already provided by ERC, without a competitive purchasing process, for the District's Year 9 E-Rate applications.

a. The ROI Analysis Was Delayed And Incomplete

The intended purpose of the ROI analysis was to "facilitate with the analysis, organization and communication of the financial impact and business value of deploying VoIP and related network technologies." See ROI Solicitation at TAB 59. Presumably, the results of the ROI analysis would provide TTS with

direction on whether the District should stay with its current telecommunications system, proceed with VoIP and WAN, or go in another direction altogether.

In a fine example of putting the cart before the horse, long before the ROI analysis was finished, the District and ERC prepared and issued RFPs seeking to upgrade the District's telecommunications system for VoIP and WAN. This timing suggests the decision to proceed with VoIP and WAN had been made already, which calls into question the very purpose served by the ROI analysis. To maintain the integrity of the process and avoid the appearance of impropriety, the ROI analysis should have been completed before RFPs were issued.

In the ROI Solicitation, the District projected that the information gathering process would take no more than four weeks. See TAB 59. This expectation appears unrealistic, particularly since the TTS offices were apparently closed for one week in December. While ERC began working on the ROI analysis right away, as early as December 9, 2005, the analysis took over two months to complete. As late as February 3, 2006, Mr. Kettwich was still e-mailing questions to Messrs. Campbell and Flores seeking information necessary for the ROI analysis. See e-mail attached at TAB 60. The ROI analysis was finally presented to the District's Governing Board on February 14, 2006, the same day that TTS sought approval to award the WAN and VoIP contracts to Trillion and other vendors, but even then it was incomplete. In fact, one of ERC's recommendations to the Board was that the ROI analysis be extended and enhanced to "provide sufficient resources and time to deliver a proper ROI." See ROI Board Presentation at TAB 61.

The District demonstrated poor planning and time management. Part of the problem lies in the looming February 16, 2006 deadline for filing the District's Form 471 with USAC. In order to meet that deadline, the District had to post its RFPs by January 13, 2006, regardless of whether the ROI analysis was complete. The USAC's deadlines, however, were known well in advance, and the District should have planned for them accordingly. The ROI analysis should have been initiated and completed long before the RFPs were issued. Instead, the District paid for an incomplete ROI analysis that served no apparent purpose.

b. District Staff Had Extensive, Improper Communications With Trillion Before And During The RFP Process

Immediately prior to and during the RFP process, TTS personnel were exchanging e-mails, having telephone conversations and attending meetings with Trillion representatives regarding the District's WAN design. Just in the three months prior to posting the RFPs, there were at least six face-to-face meetings³⁵

³⁵ Attached at TAB 62 is TUSD's calendar identifying the dates of face-to-face meetings between TTS personnel and representatives from Trillion and ERC.

and more than twenty-four e-mail exchanges between TTS and Trillion.³⁶ These communications included, but were not limited to, the following incidences:

- 10/5/05: Messrs. Campbell, Flores, Gaessler and Clague met for lunch to discuss the District's technology needs and Trillion's services.
- 10/27/05: Superintendent Pfeuffer, Mr. Campbell and Mr. Flores met Trillion's CEO Bear Poth, Mr. Davis and Mr. Gaessler for breakfast.
- 10/27/05: Trillion hosted a dinner for 10-15 District personnel to discuss the District's technology needs and wants.
- 11/8/05: Mr. Gaessler e-mailed Superintendent Pfeuffer, Mary Veres and Martha Peyton an invitation to a dinner hosted by ERC.
- 11/9/05: Mr. Gaessler informed Mr. Campbell and Mr. Flores that Trillion had begun working on the District's preliminary WAN design.
- 11/10/05: Mr. Gaessler e-mailed Mr. Campbell an introduction to ERC.
- 11/17/05: Mr. Flores, Ms. Peyton, and Mr. Gaessler met for lunch.
- 11/23/05: Mr. Gaessler e-mailed Messrs. Campbell and Flores a copy of the District's preliminary WAN design.
- 12/7/05: Messrs. Campbell, Flores, Davis and Gaessler met at the TTS office to review fiber questions and Trillion's WAN design for the District, and for a ShoreTel IP telephone demonstration.
- 12/14/05 and 12/16/05: Mr. Gaessler e-mailed to set up additional meetings with Messrs. Campbell and Flores.
- 12/21/05: Mr. Flores met Mr. Gaessler and Mr. Clague for breakfast.

Trillion also provided gifts and gratuities for TUSD employees. Accepting these gifts and gratuities violated District Policy and state conflict of interest law, namely A.R.S. § 38-504(c). First there was the dinner at Tamayo. See TABS 21 through 23. Mr. Gaessler also routinely presented Starbucks gift cards to Martha Peyton, who scheduled meetings for Mr. Flores and Mr. Campbell. The first gift card was given to Ms. Peyton on or before November 8, 2005. See e-mail at TAB 63. Then, according to his expense report, Mr. Gaessler purchased a \$20 gift card for Martha Peyton on November 20, 2005, another \$20 gift card on

³⁶ It is understood that there were even more meetings and e-mails, but TUSD personnel failed to maintain and produce the requested records and copies of the e-mails, as required by A.R.S. § 39-121.01.

December 18, 2005, and a \$25 gift card on December 20, 2005. See Mr. Gaessler's December 2005 expense report attached at TAB 64. As seen below, Mr. Gaessler's attention to Martha Peyton paid off.

On January 13, 2006, with the assistance of ERC, the consultant recommended by Trillion, the District posted the RFPs. After that, all communication with prospective bidders was supposed to occur through the purchasing office. On January 20, 2006, Cherie Odeski e-mailed Rudy Flores, Al Manzo, Mary Veres, Martha Peyton, Sharon Carpenter and Guyton Campbell reminding them not to talk directly to any vendor about the RFPs or answer any questions about the RFPs. She instructed District staff to ask the vendors to submit their questions in writing to her. See e-mail attached at TAB 65.

On January 20, 2006, Mr. Gaessler e-mailed Martha Peyton, inviting her, Mr. Flores and Mr. Campbell to be Trillion's guests at a dinner it was hosting in conjunction with an upcoming AzTEA event. See TAB 66. Then, on January 27, 2006, Martha Peyton e-mailed Gary Gaessler asking if he could forward the topology map that Trillion had created for the District, but with Trillion's logos and trademarks removed. The District apparently wanted to insert TUSD's logos onto Trillion's topology map and use it as if it were the District's own map. See TAB 67. Finally, on January 31, 2006, Martha Peyton responded to an e-mail request from Gary Gaessler to overnight two or three of the District's bond books to Trillion. Ms. Peyton provided him with an internet link to the bond information. See TAB 68. The previous day, she had sent a question from another vendor to Cherie Odeski. See TAB 69. None of the addendums³⁷ published for RFP #06-69-11 provided this bond information to the other prospective vendors.

Trillion's extensive communications with TTS staff violates the USAC E-Rate Program Rules³⁸ and erodes all confidence in the District's procurement actions. The purpose of the School Procurement Code is to "provide a means for enhanced oversight and public confidence in the action of school districts." See A.R.S. § 15-213, Historical and Statutory Notes to 1999 Amendments. Public confidence is diminished when a prospective vendor takes District personnel out to dinner, has numerous meetings with TTS employees, and with the knowledge and assistance of those employees prepares the District's preliminary WAN design weeks before the District issues its RFP. Public confidence is further eroded by the fact that no other vendors were given such extensive access to District staff and information during this same period.

³⁷ The School Procurement Code permits addendums to RFPs to correct defects or ambiguities in the RFP documents, or to avoid prejudice by furnishing the same information to all bidders. See A.A.C. R7-2-1026.

³⁸ The USAC rules for running an Open and Fair Competitive Bidding Process, attached at TAB 4, direct that a school district "should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of the competition or would furnish the service provider with 'inside' information or allow it to unfairly compete in any way."

One result of the relationship developed between TTS staff and Trillion in the months preceding the RFPs is that by the time the WAN RFP was issued on January 13th, TTS employees treated Trillion as if it were already a District consultant. This relationship, as well as all the Starbucks gift cards, may account for Martha Peyton's willingness during the RFP process to bypass procurement code requirements and the directives of the purchasing department to seek Trillion's documentation and to answer Trillion's question about the bond books without providing that same information to any of Trillion's competitors.

c. ERC Improperly Participated In RFP #06-65-10

While ERC was conducting the ROI analysis and despite the fact that ERC had expressed interest in bidding on the E-Rate Consulting RFP, it had a hand in drafting RFP #06-65-10. It then proceeded to submit a proposal in response to RFP #06-65-10. See Flores EUO testimony attached at TAB 70. Despite a clear conflict and the advice of TUSD's purchasing department, TTS continued to share information with ERC and then permitted ERC to bid on RFP #06-65-10. Doing so violated the procurement code and District policy.

ERC repeatedly expressed an interest in bidding on the District's future E-Rate services work. See TABS 42 and 71. On December 20, 2005, ERC provided a template with language from its own contracts. See TAB 72. Mr. Flores testified that Mr. Campbell asked ERC for this information and the template was provided to the purchasing department for use in developing RFP #06-65-10, even though TTS knew that ERC would be bidding on that RFP. See Flores EUO testimony at TAB 70. In January, District personnel shared the District's draft RFP with ERC's Dan Kettwich. See e-mails attached at TAB 46. Each of these incidences created a conflict that disqualified ERC from bidding on RFP #06-65-10.

As an interested party, per A.A.C. R7-2-1001(45), ERC should not have been given access to RFP #06-65-10 prior to it being posted. Even if one considered ERC's provision of Year 9 E-Rate services to include acting as a procurement advisor, A.A.C. R7-2-1007(C) and A.A.C. R7-2-1105(A) prohibit such procurement advisors from benefiting from the awarded contract.

Moreover, the District recognized this conflict with regard to another interested vendor. In January 2006, TTS employee Al Manzo had asked representatives of Calence, Inc. to perform some assessment actions to assist with the ROI analysis. RFPs #06-68-11 and #06-69-11 had already been posted. Calence asked whether, if it agreed to do the assessment job, it would have a conflict and become ineligible to bid on RFP #06-69-11. In a series of e-mails, Sharon Carpenter, TUSD's Purchasing Manager, informed TTS staff that it is a conflict of interest for a vendor who provides assistance in the network analysis to be awarded future jobs related to that analysis. See e-mails attached at TAB 73. The District should have exercised the same caution with RFP #06-65-10.

d. The District's RFP Notices Did Not Satisfy School Procurement Code Requirements

The District failed to publish notice of these RFPs as required by the School Procurement Code. In each case, the District posted the RFPs on the District website and sent copies to those vendors on the District's prospective bidders' list. Based on the number of prospective bidders for RFPs #06-68-11 and #06-69-11, it does appear that the District's notice ensured adequate competition. Nonetheless, the District did not satisfy the School Procurement Code's requirements for notice publication.

The School Procurement Code provides that notice of RFPs shall be issued in accordance with R7-2-1022. See A.A.C. R7-2-1042(C). Generally, a school district may provide notice by mailing copies of the RFP to vendors on the prospective bidders' list and providing a copy at the school district's offices or on its website. See A.A.C. R7-2-1022 and R7-2-1024(C). Publication of the notice in the official county newspaper is usually only required when there are four or fewer bidders on the prospective bidders' list. See A.A.C. R7-2-1022(B).

An exception to this general rule is made for the procurement of services. If the RFP is for services other than those described in sections R7-2-1061–1068 (services of clergy, certified public accountants, doctors, dentists, and legal counsel) and R7-2-1117–1123 (services of architects, engineers, land surveyors, assayers, geologists, and landscape architects), then "notice also shall be given as provided in subsection (B)." See R7-2-1022(A). Subsection (B) requires notice publication twice in the official county newspaper between six and ten days apart and no less than two weeks before bid opening. See R7-2-1022(B).

In this case, the services sought pursuant to these RFPs do not fall under any of the exceptions identified above. Given the long list of prospective bidders, competition may not have been harmed by the lack of newspaper publication. Nonetheless, the better path for the District would have been to plan sufficiently in advance and publish notice as required by the School Procurement Code.

4. The ROI Analysis And Related RFPs Were All For Naught As TUSD Withdrew Its Year 9 E-Rate Applications

After paying ERC nearly \$40,000 for the ROI analysis and USAC filings, and then paying the Miller Institute/Learning Tech almost \$5,000 to salvage its E-Rate applications, TUSD withdrew some or all of its Year 9 E-rate applications.³⁹ It did so for several reasons: ERC filed some of the 471s after the filing deadline; the District used a 72 percent discount rate which made funding extremely unlikely; and the District did not have a written technology plan for the year it sought E-Rate funding.

³⁹ By July 18, 2006, the District had decided to withdraw at least some of its Year 9 applications. See July 18, 2006 e-mail from Mark Miller attached at TAB 74.

Despite the application problems, TUSD hired Learning Tech to salvage some of the District's Year 9 E-Rate applications.⁴⁰ Based upon the application materials submitted to USAC and subsequent materials provided in the Selective Review process, Learning Tech was skeptical that the Year 9 applications would be approved. Mr. Miller wrote on June 5, 2006: "Candidly, we do not currently have adequately strong materials and supporting information to be very encouraging about the likely results of the Selective Review."⁴¹ See e-mail attached at TAB 75.

It appears the District did not have a written technology plan for Year 9 in place at the time it submitted its Form 471s. When the District hired Learning Tech, Mark Miller repeatedly asked the District for its technology plan. On June 5, 2006, Mark Miller sent an e-mail regarding the countdown to the selective review deadline, stating: "We still have not seen the tech plan, which by regulation was to have existed, at least in reasonable draft form, before the Form 471s were submitted on 2/16/2006. The 21 page document we did receive does not cover the coming funding year." See TAB 75. Learning Tech apparently obtained an extension from USAC to submit a signed statement from the District with the exact date the tech plan existed. On August 31, 2006, Mr. Miller wrote:

Just wanted to gently remind you that today is the 7th day since we were told by SLD to provide these materials within 7 days. We have not yet received the signed statement from you with the exact date of the Tech Plan that existed prior to 1/10/06. I know it is a very busy time of year, but can you please make this top priority? Without it, the portion of the Y9 funding we are trying to rescue is a lost cause.

A copy of this e-mail is attached at TAB 77. At 5:05 p.m. on August 31, 2006, Diana Abele from Learning Tech notified USAC that the District would not be able to meet the midnight deadline. See e-mail attached at TAB 78.

TUSD's inability to properly complete its Year 9 E-Rate filings, after months of effort and nearly \$45,000, is symptomatic of a larger problem. District employees repeatedly emphasize the ends over the means, bypassing required processes. Our investigation revealed numerous instances of this practice:

⁴⁰ This work was separate from the RFP #06-65-10 contract awarded to LearningTech.

⁴¹ USAC utilizes the Selective Review process to verify the certifications applicants make on their Forms 471. During the review, USAC examines the applicant's competitive bidding documents to determine whether the applicant used a fair and open process and also determines whether the applicant can make use of the requested services. A summary of USAC's Selective Review process is attached at TAB 76.

- Completing its Year 7 E-Rate application and selecting a vendor before the required 28-day waiting period had elapsed;
- Hiring and permitting ERC to begin work on the ROI analysis before the required three quotes were received;
- Publishing RFPs and implementing plans for WAN and VoIP before the ROI analysis established that WAN and VoIP were needed;
- Applying for Year 9 E-Rate funding before the required tech plan was completed and approved;
- Working with Trillion on the District's WAN design long before the RFPs were issued or Trillion was selected as an approved vendor.

Until the District learns to follow required procedures, it will continue to find itself in situations such as this – where it not only lost out on the opportunity for Year 9 E-Rate funding, but spent tens of thousands of dollars with no results.

5. Trillion And ERC Colluded On The TUSD Project

a. Trillion And ERC Were E-Partners Working Together Long Before The TUSD Project

Before getting involved with TUSD, Trillion and ERC were already e-partners. In the June 2005 ePartner Reseller Agreement, ERC appointed Trillion as its nonexclusive agent to sell and service ERC's compliance services to school districts. In return, Trillion was given free access to ERC's ServCast program, which allowed Trillion to identify potential customers by data mining E-Rate filings. The E-Partner Agreement also contained a restrictive covenant prohibiting Trillion from reselling service contracts for any other e-rate consulting companies. A copy of this E-Partner Agreement is attached at TAB 79. Trillion asserts that it never sold any service contracts for ERC, and an April 2006 e-mail shows Trillion proposing that its ServCast subscription be paid for with money ERC owed for the e-rate seminars it sponsored with Trillion. See TAB 80.

Even if Trillion was not actually selling ERC's services, the two companies developed a close, symbiotic relationship. Throughout 2005, Trillion and ERC jointly sponsored e-rate seminars in Colorado, California and Arizona. They also worked together and communicated regarding e-rate projects at several different school districts. Attached at TAB 81 is a May 2005 e-mail from Trillion's Gary Gaessler regarding Jon Slaughter, ERC's Chief Executive Officer, and an upcoming school district meeting at the Canon City (Colorado) School District. Attached at TAB 82 is an August 2005 e-mail where Mr. Gaessler recommends ERC and Jon Slaughter to the Bloomfield School District in New Mexico. Then in September 2005, Trillion and ERC discussed working together to set up

meetings with the Arizona Department of Education (ADE). Mr. Gaessler suggested that they try to get the Director of Educational Technology at ADE to host an e-rate seminar, and that Jon Slaughter could speak at the seminar and Trillion and ADE could share the seminar costs. See TAB 83.

Finally, on November 8, 2005, there is an e-mail exchange between Trillion's Gary Gaessler and ERC's Dan Kettwich where they discuss working together on their sales pitches to Arizona school districts. Mr. Kettwich comments that he is "trying to get with Tucson Unified, and Scottsdale as well." Suggesting they focus on joint meetings, Mr. Gaessler forwards a spreadsheet showing his contacts at Arizona school districts, commenting that he can get Mr. Kettwich introductions to those contacts on the spreadsheet that he has highlighted in green, and that he wants in on those contacts he has highlighted in yellow. On the spreadsheet, TUSD is highlighted in green, indicating that Mr. Gaessler could get ERC an introduction to the District. A copy of this e-mail exchange and the spreadsheet are attached at TAB 84. This e-mail exchange occurred only two days before Mr. Gaessler introduced ERC to TUSD, yet Mr. Gaessler never mentioned Trillion's relationship with ERC, either in his e-mail introducing ERC to the District or in any subsequent e-mails.

Trillion endeavored to keep its relationship with ERC secret, and for good reason. In September 2005, a Trillion salesman unintentionally sent one of ERC's competitors, Infinity Communications and Consulting, an invitation to an e-rate seminar sponsored by both Trillion and ERC. In an effort to smooth over his gaffe, the salesman suggested that Infinity and Trillion could co-sponsor a future e-rate event. In response, Infinity commented:

Thanks for the offer but we make it a policy to not co-present with any service providers. I hope you can appreciate our position. Too many people are going to jail and we can't be seen as having any type of partnered alliances with any service provider(s).

Having reminded Trillion of the legal risks of such alliances, Infinity pointed out that ERC's website listed Trillion as one of ERC's ePartners. A copy of this e-mail exchange is attached at TAB 85. Forwarding this e-mail to Trillion's Roger Clague, the salesman stated that Infinity could "cause some legal problems concerning our E-Rate seminars. You may ask ERC to remove Trillion on their web site."

Despite the potentially dire legal consequences, Trillion and ERC continued their alliance, jointly sponsoring e-rate seminars and working together on sales pitches to Arizona school districts. Trillion also continued to keep the alliance secret. As late as January 2006, Trillion was e-mailing ERC asking it to remove Trillion's logo from ERC's website. Trillion's Jennifer Sigmund complains, "Dan, it is still on there! I'm starting to get a bit cranky about this. Please get it removed ASAP. Thanks." See e-mails attached at TAB 86.

b. Trillion And ERC's Collusion Continued During TUSD's E-Rate Application And Procurement Process

Before TUSD's procurement process even started, Trillion and ERC began conspiring to ensure both companies were awarded District contracts. Only two days after Trillion's Gary Gaessler and ERC's Dan Kettwich agreed to work together to pitch both companies to Arizona school districts, Mr. Gaessler introduced ERC to TUSD, one of the school districts that Mr. Kettwich had said he wanted to get in with. See TABS 26 and 84. Less than two weeks later, TUSD initiated its flawed procurement process for the ROI analysis.

TUSD's solicitation for price quotes for the ROI analysis required vendors to submit price quotes no later than November 30th. On November 28, 2005, two days before ERC submitted its quote to the District, Jon Slaughter sent a draft of ERC's ROI quote to Trillion. See e-mail attached at TAB 87. No explanation was given for why Trillion would need to review ERC's proposal before the District ever saw it. Two days later, on November 30, 2005, when he e-mailed ERC's quote to the District, Mr. Kettwich noted that the ROI solicitation did not mention WAN and explained that an integrated WAN/IP TEL infrastructure could be cost effective. See TAB 34. An integrated WAN/IP TEL system was, of course, what Trillion proposed for the District. On this same day, ERC sent another copy of its quote submission to Trillion. See e-mail attached at TAB 88. Mr. Gaessler forwarded ERC's quote to Messrs. Clague and Davis, Trillion's two vice-presidents, stating "Here is the consulting proposal ERate consulting sent Tucson USD. Note the mention in the below of the WAN and managed IP Tel services. . . I worked with Dan [Kettwich] this AM and found him an IP Tel consultant they could sub contract that is Shoretel savvy." See TAB 88. Trillion was heavily promoting ShoreTel IP Tel equipment.

ERC began working on the District's ROI analysis by December 9, 2005, and started on the District's E-Rate applications by December 15, 2005. At that point, any communication with prospective vendors should have ceased. Yet on December 20, 2005, when Messrs. Gaessler and Clague were in Tucson to meet with Rudy Flores, they also had a dinner meeting with ERC's Dan Kettwich, at which they discussed TUSD's ROI project and its IP Tel needs. There is no evidence that ERC ever discussed the ROI project and the District's IP needs with other prospective vendors. A few days later, Mr. Gaessler asked Vasili Triant to send ShoreTel's IP Tel TCO items directly to Dan Kettwich, thus allowing ERC to review information from Trillion's preferred provider while ERC was working on the District's E-Rate applications. See e-mail attached at TAB 89.

Trillion continued communicating with ERC during the E-Rate application process. On January 9, 2006, ERC's Dan Kettwich e-mailed Scott Smyth, Trillion's Vice-President of Legal and Regulatory Services. Scott Smyth responded the same day, setting up a conference call with Gary Gaessler and Dan Kettwich. See e-mail attached at TAB 90. Then, on January 11th, Mr.

Smyth e-mailed ERC's Jon Slaughter, who had apparently asked for clarification from Trillion about its voice services. In his response, Mr. Smyth provided sample Form 470 language, commenting on what he calls "successful 470s":

Typically we see successful 470s just refer to "Wide Area Network" because the voice functionality is simply a subset of that. We have also seen funding approved for 470s that referred to "Digital Transmission Services" (e.g., 470 # 961680000493104).

A copy of this e-mail is attached at TAB 91. Trillion's "successful 470s" are, of course, those that Trillion would qualify for or those that would fund the services Trillion provides. Just two days after receiving Trillion's suggestions, ERC posted the District's Form 470s on the USAC website.

Trillion's communications with ERC did not stop even after the Form 470s were posted and the RFPs issued. In mid-January, as Trillion personnel were preparing Trillion's RFP proposal, Mr. Gaessler noted, "ERC says even though it [says] Cisco parts #'s they are open to other vendors," indicating that he had already spoken with ERC regarding the RFP specifications. See e-mail attached at TAB 92. While every other vendor had to submit questions through TUSD's purchasing department, Trillion was able to seek clarification directly from ERC. Because of their alliance, Trillion and ERC were sharing information with each other -- information that other prospective vendors simply did not have.

On January 31, 2006, Mr. Gaessler e-mailed Trillion's Scott Smyth:

Steve mentioned you spoke with Slaughter and his thinking is Hybrid WAN and also Trillion purchasing their PBX. I heard he is in Tucson working with TUSD this week. Can we do a call with him tomorrow and lets drill down on these items.

FYI: I have not spoke with him in a while and I believe his WAN hybrid thinking is from some very initial conversations we had before TUSD told us it may be a political nightmare working with the city to get access to that fiber.

See e-mail attached at TAB 93. Then on February 2, 2006, Mr. Gaessler e-mailed Trillion Vice-President Steve Davis that ERC's Dan Kettwich had called with "some WAN bandwidth questions for TUSD," asking if they could call him back together. See e-mail attached at TAB 94. These e-mails reveal not only that Trillion and ERC were talking to each other about the TUSD project, but also the extent to which Trillion influenced ERC and shaped the RFP language.

Also on February 1st and 2nd, there is this revealing e-mail exchange between Gary Gaessler, Steve Davis and Mark Rammer, a Trillion employee working on the TUSD proposal:

Rammer: New Questions for Tucson. Please delete the previous ones. Thanks. 1. How many analog lines are dedicated to fax machines per site? 2. How many simultaneous inbound and outbound calls will you have for the entire district?

Gaessler: Steve: According to the RFP the deadline was Jan 25th 2006 for questions. Should we funnel these through ERC?

Davis: Yes.

Gaessler: OK, can you ask Scott [Smyth] to ask Jon these questions? Also my wife needs an inventory list of their existing Nortel PBX's to quote them.⁴² Can Jon get that also?

A copy of these e-mails is attached at TAB 95. Trillion was asking questions and getting clarification from ERC even after the RFP's deadline for questions had passed. Trillion was intentionally using its alliance with ERC to sidestep the procurement rules and gain an advantage over other prospective vendors.

c. Trillion And ERC Violated Antitrust Laws, The School Procurement Code, And USAC's E-Rate Program Rules

Competition was harmed by the collusion between Trillion and ERC because in drafting the District's E-Rate applications and RFPs, ERC was influenced by Trillion. Competition was also harmed by the fact that other vendors did not have access to all the information available to Trillion, by virtue of its relationship with TTS staff and its alliance with ERC. Consequently, some vendors simply decided not to bid on the RFPs while others submitted bids that were not as strong as they could have been had the competition been fair.

After the RFPs were issued many prospective vendors submitted questions to the District. Notably, Trillion did not submit any questions. It already had much of the information that the other prospective vendors sought, or it could get that information directly from ERC. For example, on January 31, 2006, a prospective vendor by the name of Shared Technologies submitted questions asking for information on the District's PBXs. A copy of this e-mail is attached at TAB 96. The vendor commented: "These RFP's are quite extensive and involved and without the requested information, it would be difficult for any vendor to respond with a totally technical and professional solution."

⁴² According to Trillion, Mr. Gaessler's wife worked for Straticom, Inc., which apparently decided against submitting a proposal to purchase TUSD's legacy phone system.

Another complaint was received on February 7, 2006, from a prospective vendor called Sentinel Technologies. A copy of this e-mail is attached at TAB 97. When asked to confirm receipt of the District's Addendum #5 to RFP 06-69-11, the vendor responded:

We will have to NO-BID due to lack of information and lack of time for walkthru's [sic.] at needed locations. This bid is impossible to spec out accurately. Information that is needed in a timely manner is as follows:

1. Site count
2. drop count
3. mdf/idf count
4. fiber runs
5. port counts
6. exact cable runs, trenching, conduit, etc..

How can anyone be accurate??

Had the District's procurement process been conducted in a fair and open manner, without the collusion between Trillion and ERC or the improper conduct of District staff, then these vendors could have submitted proper responses to the RFPs and the District would have benefited from the competition.

By conspiring to ensure both companies were awarded District contracts, Trillion and ERC violated the School Procurement Code,⁴³ state antitrust statutes, and the USAC E-Rate Program Rules. A.R.S. § 44-1402 prohibits contracts or conspiracies in restraint of trade. When such contracts are with a governmental agency, A.R.S. § 44-1416(A) makes them per se unlawful.

The USAC rules, attached at TAB 4, mandate an open and fair competitive bidding process. That did not occur here. As the USAC rules state:

'Fair' means that all bidders are treated the same and that no bidder has advance knowledge of the project information. 'Open' means that there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them.

In this case, neither TUSD nor ERC treated all bidders the same. Both District staff and ERC were funneling information to Trillion that was not shared with other vendors. And Trillion not only had advance knowledge of the project information but, with ERC's assistance, influenced the language and scope of the District's RFPs and its E-Rate application.

⁴³ The School Procurement Code, A.A.C. R7-2-1084, addresses anticompetitive practices and requires offerors to certify on non-collusion affidavits that their offers did not involve collusion or anticompetitive practices. In light of the evidence of collusion set forth above, any such non-collusion affidavit signed by either ERC or Trillion would certainly be suspect.

The USAC rules go on:

[A] conflict of interest exists when the applicant's [school district's] consultant is associated with a service provider that is selected and is involved in determining the services sought by the applicant and the selection of the applicant's service provider(s).

This is precisely what occurred here. Trillion and ERC had an existing alliance and had agreed to work together to sell their services to Arizona school districts. Without revealing its alliance to TUSD, Trillion helped ERC become the District's e-rate consultant. In that position, ERC was involved in determining the scope of the services TUSD would seek in its e-rate applications. With input from its ePartner Trillion, ERC drafted the District's Form 470s and helped draft the RFPs, one of which was used to award a contract to Trillion.

C. The Promethean Procurements And Conferences

In May 2008, as the above report was being finalized, the AGO received another complaint about TUSD through the Arizona Department of Education's fraud hotline. This was followed by a written complaint on June 3, 2008. The complaint alleged that TUSD improperly selected a vendor called Promethean during a 2006 selection process for the procurement of interactive whiteboards; that members of TUSD's Technology Adoption Committee made agreements that if Promethean were awarded the contract, TUSD would be selected to host a Promethean conference; and that during this Promethean conference, held in April 2008, TUSD employees received gifts and gratuities from Promethean, including but not limited to registration fees, hotel rooms, food and drink, gift baskets and gifts such as I-pods, Cross pens and leather portfolios.

1. The Selection Of Promethean And The Logical Choice GSA Contract

In the summer of 2006, TUSD formed a selection committee to evaluate interactive whiteboards and projectors. The selection committee consisted of Rudy Flores, Ed Kowalczyk, Steven LaFrance, Bob Kramer, Nancy Himel-Brisco, and Judy Wingert. Lisa Long, the Assistant Director of Curriculum & Technology Integration, was on the selection committee, but apparently withdrew before the evaluations were made. The Committee Sign-In Sheet is attached at TAB 98. The District did not issue an RFP, but instead selected vendors for product demonstrations and evaluation based on existing state and federal contracts that TUSD could access through cooperative purchasing arrangements.

After the committee ranked the vendors, a company called CCS Presentation Systems, Inc. was selected as the projector vendor, and Promethean was selected as the interactive whiteboard vendor. See e-mail

attached at TAB 99. Promethean is a corporation registered in the United Kingdom, with its U.S. headquarters in Georgia. It does business through resellers, such as Logical Choice Technologies, Inc. ("Logical Choice"), a Georgia corporation. The interactive whiteboard contract was awarded to Logical Choice using its General Services Administration ("GSA") contract.

a. Promethean's ActivClassroom

Promethean produces and markets interactive whiteboards and accessories, along with the necessary software and educational support materials, as part of its ActivClassroom bundle of products. The Promethean ActivClassroom⁴⁴ consists of the following basic items, though additional accessories can be added:

- ActivBoard, an interactive whiteboard that works as a screen with a computer and a projector, while also permitting users to write on it like an ordinary whiteboard;
- ActivPen, a combination whiteboard pen and computer mouse;
- ActivSlate, a wireless computer tablet interface for the whiteboard;
- ActiVote, a wireless hand-held voting device used for quizzes and polls, permitting teachers to assess students' learning on the spot.

The Promethean ActivClassroom package includes operating software which enables users to download resources from Promethean's website, including tools, images, flipcharts and lesson plans.

b. GSA Contracting

The United States General Services Administration acts as the federal procurement office through which federal agencies and employees can access contracts to purchase goods and services. Through the GSA's Cooperative Purchasing Program, state and local governmental entities, including school districts, may access GSA contracts to purchase information technology goods and services, including hardware, software, supplies, support equipment and services. The GSA's Cooperative Purchasing Program information is attached at TAB 101.⁴⁵

If a state or local governmental entity follows the GSA Schedule Ordering Procedures, the purchase is deemed to satisfy federal competitive purchasing requirements.⁴⁶ It also satisfies state procurement requirements. A.R.S. § 15-213(J) provides that a school district may purchase materials or services through

⁴⁴ Promethean's ActivClassroom brochure is attached at TAB 100. More information is available at Promethean's website, <http://www.prometheanworld.com/us/>.

⁴⁵ The GSA information is available on the GSA website at <http://www.gsa.gov>.

⁴⁶ Frequently Asked Question #10, included as part of the Cooperative Purchasing Program information at TAB 101, addresses whether GSA orders meet competition requirements.

a GSA contract without complying with the School Procurement Code, provided the school district's governing board makes the specific determinations set forth in the statute.

The GSA website provides instructions for ordering through a GSA contract.⁴⁷ GSA guidelines encourage, and in some cases require, ordering entities to seek additional discounts from the vendors. Included in the Ordering Guidelines are instructions for when an order includes open market items. See TAB 102, GSA Basic Schedule Ordering Guidelines, paragraph 12. Open market items are those items not covered by the GSA Schedule contract. They may include incidental items, non-contract items, and non-Schedule items. In accordance with the Federal Acquisition Regulation ("FAR") section 8.402(f), attached at TAB 103, an ordering entity may include in its purchase order items not on the vendor's GSA Schedule Contract (open market items) **only if**:

- (1) all applicable purchasing regulations have been followed for those open market items (including competitive purchasing requirements);
- (2) the ordering entity has determined the prices for the open market items are fair and reasonable;
- (3) the items are clearly labeled on the invoice as open market items; and
- (4) all clauses applicable to those open market items are included in the order.

c. The Logical Choice GSA Contract

Beginning in July 2006, TUSD purchased Promethean whiteboards through Logical Choice's GSA contract (No. GS-35f-0519M). The current version of this contract is attached at TAB 104. Section I, paragraph 17 of the contract reproduces the FAR requirements for purchasing open market items. Frequently modified, the current contract only covers Special Item Numbers ("SIN") 132-32 (Software Licenses) and 132-50 (Classroom Training). Prior versions of the contract also covered SIN 132-8 (Purchase of Equipment) and SIN 132-12 (Maintenance of Equipment, Repair Services and/or Repair/Spare Parts). Logical Choice added the Promethean line of products to its GSA contract in 2005. Attached at TAB 105 is a GSA Schedule showing the August 2005 prices for Logical Choice's Promethean products.

2. The Promethean Purchases Violated State And Federal Laws And District Policies

Following the selection committee's evaluations, in July 2006, TUSD initiated its first purchase of Promethean products from Logical Choice using its

⁴⁷ Attached at TAB 102 are the GSA's Basic Schedule Ordering Guidelines.

GSA contract. This first purchase totaled \$1,021,672.34. Logical Choice's invoice and the District's purchase order and requisition are at TABS 106 and 107, respectively. This initial purchase was followed by 44 additional Logical Choice purchase orders through the end of the 2006-2007 fiscal year, for another \$871,168.39. All told, the District paid Logical Choice a total of \$1,892,840.73 in 2006-2007.⁴⁸ In April 2007, TUSD also began purchasing Promethean products from an Arizona company called Level 3 Audio Visual, L.L.C. ("Level 3") using Level 3's contract with the Arizona State Procurement Office.⁴⁹ Through the end of the 2006-2007 fiscal year, TUSD issued thirteen purchase orders to Level 3 for a total of \$157,713.56.⁵⁰ Combined, TUSD's purchases of Promethean products from both companies in 2006-2007 totaled \$2,050,554.29.

These purchases continued in fiscal year 2007-2008. In July 2007, TUSD issued three purchase orders to Logical Choice, totaling \$17,680.90. See TAB 108. Because of problems with Logical Choice, \$8,100 was later credited back to the District. A copy of this credit is attached at TAB 111. From July 2007 through June 2008 the District also issued 59 purchase orders to Level 3, for a total of \$356,668.15. See TAB 110. TUSD's Promethean purchases from both companies in 2007-2008 totaled \$366,249.05. The cumulative total, for both years and both companies, is 120 purchase orders totaling \$2,416,803.34.

a. The District Failed To Obtain Governing Board Approvals And Written Determinations

Since the purchases from both Logical Choice and Level 3 were made through cooperative purchasing arrangements using state and federal contracts, no competitive procurement process was necessary, except for those open market items noted below. Nonetheless, Governing Board action was still required in order to complete these purchases.

First, A.R.S. § 15-213(J) and District Policy DJ require Governing Board approval for these purchases.⁵¹ Both District Policy and A.R.S. § 15-213(C) also prohibit dividing or sequencing a District's total annual purchase of like items from one source over the course of a fiscal year in order to avoid prescribed limits. In July 2006, TUSD's Governing Board approved only the initial purchase order of Promethean products from Logical Choice. Attached at TAB 112 is the Governing Board agenda packet for this initial purchase. The Governing Board's approval can be seen in the Governing Board minutes, Study/Action Item No. 6. The July 11, 2006 Minutes are attached at TAB 113. No Governing Board

⁴⁸ Attached at TAB 108 is a spreadsheet showing all purchase orders to Logical Choice from July 2006 through July 2007.

⁴⁹ Level 3's State procurement contract, number 0601252, with the current Promethean price sheet is attached at TAB 109.

⁵⁰ Attached at TAB 110 is a spreadsheet showing all purchase orders to Level 3 from April 2007 through June 2008.

⁵¹ A.R.S. § 15-213(J) states that a Governing Board may authorize purchases from a GSA Contract. District Policy DJ requires Governing Board approval for purchases over \$250,000.

authorization was ever sought for the remaining \$871,168.39 in purchases from Logical Choice in 2006-2007, or the \$157,713.56 in purchases from Level 3. Since District Policy prohibits dividing or sequencing these 57 Promethean purchases, they must be considered a cumulative purchase of \$1,028,881.95. Similarly, there was no Governing Board approval in 2007-2008 for the 62 purchase orders totaling \$366,249.05. The Governing Board's approval of the first purchase order was limited to no more than \$1,300,000, and did not create a blanket purchase order. The District purchased over \$2.4 million in Promethean goods and services, almost twice what was initially approved.

Second, A.R.S. § 15-213(J) requires some due diligence on the part of a school district governing board purchasing through a GSA contract. Specifically, the governing board must make a written determination that:

1. The price for materials and services is equal to or less than the current GSA schedule price;
2. The contractor is willing to extend its GSA prices, terms and conditions to the school district;
3. The purchase order adequately identifies the GSA contract; and
4. The purchase contract is cost effective and in the school district's best interests.

In this case, those written determinations were not actually made by the TUSD Governing Board. Instead they were made by Yvonne Volpe, a District Procurement Specialist, and presented as part of the Governing Board agenda packet. A copy of Ms. Volpe's June 1, 2006 determination is attached at TAB 114. With the exception noted below, Ms. Volpe made the necessary determinations and correctly found that the prices Logical Choice was offering to TUSD were equal to or less than its GSA schedule prices. Notwithstanding Ms. Volpe's determinations, the District's due diligence stopped short of the mark.

b. TUSD Failed To Properly Procure Open Market Items

As explained above, open market items are those incidental, non-contract or non-Schedule items not covered by the GSA Schedule contract. Such items may only be included with an order if they, and any terms or conditions, are clearly identified on the invoice, if the price is fair and reasonable, and if applicable competitive purchasing requirements have been met for those items. See FAR section 8.402(f) attached at TAB 103.

Included in these Promethean purchase orders were numerous open market items. These open market items, including speakers, cables, mounting kits, junction boxes and Bluetooth adapters, are all readily available from multiple sources. Since such items were not part of the GSA contract, they should have been procured through some form of competitive purchasing, furnishing the District with the benefits of competition. Unfortunately, that did not occur.

In the first Logical Choice purchase order, three of the seven line items are for open market items. See TAB 107. These are identified as:

- | | |
|--|--------------|
| • LCT-NSP-EXST-MOUNT LCT Plenum Extr. Mtg. Kit | \$155,125.00 |
| • JNC Junction Box Kit (Surface Mount) | \$ 45,625.00 |
| • SP-KIT-P-110 Speaker Kit & Installation | \$ 45,625.00 |

With tax added, these items come to a total cost of \$260,172.00 for goods and services purchased without any competition. This amount is only for those open market items on the initial purchase order. On the remaining 46 Logical Choice purchase orders, the District purchased an additional \$82,539.98 in open market items. A table showing these additional open market item purchases is attached at TAB 115. Altogether, the District paid Logical Choice \$342,711.98 for open market items without employing any competitive purchasing process.

There can be little doubt the District was aware of these open market items. On Logical Choice's first invoice, attached at TAB 106, someone, either at Logical Choice or at the District, has written "Open Market Item" next to each of these line items. Additionally, on both the TUSD Purchase Requisition and on the first Purchase Order, attached at TAB 107, every other line item is identified by its GSA SIN, while these open market items have no SIN identification, because, of course, they are not covered by the GSA contract. The open market items are similarly identified on all of the subsequent invoices and purchase orders.

The District made no effort to properly procure these items through competitive purchasing, as required by A.R.S. § 15-213, A.A.C. R7-2-1002, and FAR section 8.402(f). There is also no evidence the District determined that the prices for these open market items were fair and reasonable, as required by FAR 8.402(f). Instead, the District slipped \$342,711.98 worth of goods and services into these purchase orders, when it knew or should have known that competitive purchasing was required. The District's failure to properly procure these items violates state and federal law, as well as District policy.

3. The Promethean Conferences

More than a year after the initial procurement, but while the District was continuing to purchase Promethean products, TUSD was selected to host a Promethean World event, consisting of two conferences. Planning for these conferences began on July 30, 2007, with Ed Kowalczyk e-mailing Promethean's Karen Lowe that TUSD was looking forward to working with Promethean to put on a great summit. See e-mails attached at TAB 116. Notably, on that very same day, Ed Kowalczyk also e-mailed Mark Elliott, Promethean's President, praising the continuing deployment of Promethean boards and the success of recent training sessions. He stated that TUSD looks "forward to our continued partnership with Promethean." See e-mail attached at TAB 117.

The first conference, called the Promethean Activ08 User's Conference ('Activ08 Conference'), was held on April 26-27, 2008. Its purpose was to highlight the Promethean ActivClassroom and demonstrate Promethean products in the classroom. The second conference, called the Promethean U.S. Education Summit ('Promethean Summit'), was held on April 27-29, 2008. Its focus was on the educational benefits of technology, with many breakout sessions highlighting the benefits of Promethean products. Both conferences were held at the J.W. Marriott Starr Pass Resort ('Starr Pass') and at TUSD schools.

a. The Activ08 Conference

The Activ08 Conference opened at Starr Pass on Friday April 25, 2008. Promethean hosted a welcome reception that evening, inviting TUSD's teachers to enjoy "Mariachis, Margaritas, and Mexican food." See e-mail attached at TAB 118. On Saturday April 26, 2008, there was a breakfast at Starr Pass and an address by a keynote speaker. Promethean provided transportation to TUSD's Naylor Middle School ("Naylor") for the practical breakout sessions. Promethean later provided transportation back to Starr Pass where Promethean hosted a cocktail reception and dinner party. There were additional breakout sessions the next day, before the Activ08 Conference concluded Sunday afternoon.

Since the District made its facilities available to Promethean free of charge, no TUSD employee was required to pay the \$100 registration fee that other attendees paid.⁵² Approximately 120 TUSD employees registered for this conference. Not all interested District employees were able to register. After registration was closed, there were several e-mails where Ed Kowalczyk asked Promethean to permit additional registrations for certain TUSD employees. First he wanted to register an employee who "has contributed a lot to the use of Promethean boards in the District and has really earned this opportunity." See e-mail attached at TAB 120. Then he asked to register a Principal Supervisor who "carries a great deal of responsibility and clout." See e-mails attached at TAB 121. Mr. Kowalczyk states, "I want to make sure all of our strong allies are in attendance" and "I was hoping there would be a way to make this happen for one of our District's decision makers." See TAB 121.

Mr. Kowalczyk's comments make little sense if, as the District contends, there is no connection between the Promethean Conferences and the District's continuing purchases of Promethean products. There would be no need for "strong allies" or "decision makers" to attend the Promethean conferences unless those employees would have influence regarding the District's decision to continue purchasing Promethean products.

⁵² There is some question as to whether other attendees paid the registration fee as Mr. Kowalczyk extended the free registration offer to non-TUSD employees through AzTEA and the Pima County School Superintendent's Regional Support Center. See e-mails at TAB 119.

b. Promethean Used District Property Without A Rental Agreement Or Proof Of Liability Insurance

During the planning for the Activ08 Conference, TUSD offered Promethean the use of the Naylor, along with the use of the District's technology and other needed equipment. Promethean also obtained the services of TUSD employees, one from the technology department and several custodians. As the conference was held on the weekend, these TUSD employees were not on the District's clock, and Promethean paid these employees separately for their time.

A.R.S. § 15-1105 provides that school districts may lease school property, including school buildings, grounds, and equipment, to any person, group or organization for any lawful purpose. The statute requires the school district governing board to charge a reasonable use fee, which may include goods and services contributed to the school district, annually approve a fee schedule, including a procedure for determining the value of goods and services provided as compensation, and obtain proof of liability insurance. Several Attorney General Opinions have addressed this statute's requirements, holding that requiring proof of liability insurance is not optional,⁵³ and the leasing party "must pay a reasonable fee and provide proof of liability insurance . . . and may not use any resources of the district other than those for which it has contracted."⁵⁴

TUSD's regulations governing use of school facilities are set forth in Policies KF, KF-R and Schedule KF-E, attached at TAB 122. Policy KF requires all users to sign a rental agreement and furnish a signed original Certificate of Insurance reflecting adequate liability coverage (\$1,000,000 CSL). This policy specifically directs that "No District facility will be made available until these forms are properly executed and should be on file at least one week in advance." Policy KF-R also emphasizes the requirement of obtaining a signed rental agreement and providing insurance coverage. It then explains the various fees, identifying the groups eligible for free or discounted use of the facilities. Schedule KF-E sets forth the fee schedule approved by the District's governing board.

For the Activ08 Conference held at Naylor, TUSD did not require Promethean to enter into a lease for its use of the property and equipment. Despite District Policies, no rental agreement was executed and no payments were received. Without a signed rental agreement, there is simply no way to determine whether Promethean used only those resources for which it had contracted. There is also no documentation that the District obtained the required proof of liability insurance from Promethean.

The District asserts that any required lease or rental payments were covered by the goods and services Promethean provided to TUSD employees, specifically the free registration it offered to some (but not all) TUSD employees.

⁵³ Ariz. Atty. Gen. Op. I87-025; Ariz. Atty. Gen. Op. I90-070.

⁵⁴ Ariz. Atty. Gen. Op. No. I02-003; Ariz. Atty. Gen. Op. No. I83-099.

Unfortunately, the District never made a determination that the value of the conference registration fees equaled the reasonable use fee that the District was required to charge Promethean. If the conference registration fees were less than the reasonable use fee, then the District made a gift of public property by not requiring Promethean to pay for its use of Naylor. On the other hand, if the conference registration fees exceeded the reasonable use fee, which, at a value of at least \$12,000, appears far more likely, then Promethean made a gift of those registration fees to the District employees, including employees who might be influential in the District's decision to continue using Promethean products.

c. The Promethean U.S. Education Summit

The Promethean Summit was held at Starr Pass beginning with an opening reception on Sunday evening, April 27, 2008. On the morning of Monday, April 28th, Promethean provided transportation to various TUSD schools so that conference attendees could observe Promethean boards being used with students in the classrooms. Conference attendees were then transported back to Starr Pass where they were provided with lunch before going to breakout sessions on the uses and benefits of educational technology in the classroom. The descriptions of the breakout sessions demonstrate that the focus of the Promethean Summit was on Promethean's products. The Promethean Summit brochure and breakout session listings are attached at TAB 123. Monday evening there was a cocktail reception and dinner party, hosted by Promethean.

Attendance at the Promethean Summit was not open to the public, but was by invitation only. Ed Kowalczyk provided Promethean with a list of TUSD personnel to invite. A copy of this list is attached at TAB 124. The invitation list included members of the Educational Technology Department, who were jointly making a presentation at the Summit. It also included Superintendent Roger Pfeuffer; Deputy Superintendent Patti Lopez; Assistant Superintendent for Teaching and Learning Steven Holmes; Chief Executive Officer for Educational Support Services Beatriz Rendon; Lisa Long, the Director of Curriculum and Instruction; and several Principal Supervisors and Principals.

d. Promethean Spent Well Over \$ 400,000 At Starr Pass On Lodging, Meals And Entertainment At These Conferences

Promethean was a generous host for both the Activ08 Conference and the Promethean Summit. For the Activ08 Conference, not only did Promethean waive the \$12,000 in registration fees for TUSD employees, but it provided all meals, drinks, and entertainment for conference attendees. For the Promethean Summit, there was no registration fee, and Promethean paid for hotel accommodations at Starr Pass, as well as all meals, drinks and entertainment.

All told, Promethean spent \$417,838.38 at Starr Pass for both conferences. This included \$111,924.12 in room (lodging) charges, and

\$296,803.20 for catering. A copy of the Starr Pass invoice is attached at TAB 125. Over \$33,000 of the catering charges were for open bars on all four nights of the two conferences.⁵⁵

e. Promethean's Gifts And Gratuities To The District And Its Employees Create A Conflict Of Interest

Of the 47 District employees on Mr. Kowalczyk's invitation list, at least ten stayed at Starr Pass in rooms paid for by Promethean. These ten employees include Lisa Long, Donald Calhoun, Sabrina Cruz, Patricia Dienz, Marcos Quijada, Andrew Kent, David Ross, Terry Ross, Catherine Espinoza and Patricia Sandoval-Taylor. A copy of the hotel registration records for these TUSD employees is attached at TAB 127. Upon information and belief, the District's Deputy Superintendent, Dr. Patti Lopez, also stayed at the resort. These District employees, including administrators and key decision makers, allowed Promethean to pay for their hotel rooms even though they all live in Tucson.

The remaining District employees did not stay at Starr Pass—at least not at Promethean's expense. Notably, the six employees from the Educational Technology Department who gave a presentation at the Promethean Summit did not stay at Starr Pass, but Lisa Long, the Department's Director, accepted Promethean's offer of free accommodation and was, in fact, invited to another summit in Boston, again with free accommodations.

Arizona's conflict of interest laws and District Policy GBEAA prohibit District employees from accepting gifts or gratuities from vendors. Pursuant to A.R.S. § 38-504(C), public employees cannot accept items of value that would not ordinarily accrue to them in the course of their official duties if those items would manifest a substantial and improper influence on the employees. Unless it qualifies as a "remote interest" under A.R.S. § 38-502(10), a gift of any pecuniary or proprietary interest is considered to be a substantial interest that creates a conflict for the public employee.

The District and its employees accepted gifts of substantial value from Promethean. Not all gifts and beneficiaries have been identified, but thus far they include:

- District custodians and technology department employees who worked for Promethean during the Activ08 Conference received \$50 gift cards in addition to their paychecks from Promethean. The District has not identified how many of these gift cards were received. See e-mail attached at TAB 128.

⁵⁵ Attached at TAB 126 are detailed invoices for the catering charges.

- Ed Kowalczyk, a member of the selection committee and the District's liaison to Promethean, received an i-Pod, which he apparently has returned to Promethean. Mr. Kowalczyk also received a \$50 gift card from Promethean. See TAB 128. In February 2007, after the District began purchasing Promethean products, but before planning for the Promethean conferences began, Ed Kowalczyk attended a Promethean Summit in Riverside, California, where it is understood Promethean also provided free accommodations and meals/drinks.
- Lisa Long, the Director of Educational Technology, received free accommodations, meals and drinks at Starr Pass, along with a gift basket in her room. See TAB 127. She also received an invitation to another Promethean Summit to be held in Boston, where she would again receive free accommodations, meals, drinks and entertainment. It is not known whether she attended this second summit. Copies of Lisa Long's invitations to both the Tucson Promethean Summit and the Boston Promethean Summit are attached at TAB 129.
- Upon information and belief, the District's Deputy Superintendent, Dr. Patti Lopez, received free accommodation at Starr Pass, as well as meals and drinks, all paid for by Promethean. Dr. Lopez may have received a gift basket from Promethean in her room as well.
- Donald Calhoun, Sabrina Cruz, and Patricia Dienz are the Principals of Naylor Middle School, Brichta Elementary, and Pueblo High School, respectively. These were three of the schools that Promethean used for the Activ08 Conference and for demonstrations during the Promethean Summit. These Principals all received free accommodations and meals/drinks at Starr Pass. See TAB 127.
- Marcos Quijada, Andrew Kent, David Ross and Terry Ross are the Principals of Roberts Elementary, Fort Lowell Elementary, Vail Middle School, and Safford Elementary, respectively. They all received free accommodations and meals/drinks at Starr Pass, courtesy of Promethean. See TAB 127.
- Catherine Espinoza and Patricia Sandoval-Taylor are employed in the District's Language Acquisition Department. They both received free accommodations and meals/drinks at Starr Pass. See TAB 127.
- The District itself also received the value of at least \$12,000 in waived registration fees for the Activ08 Conference. Even after offsetting the reasonable rental value for the use of Naylor, the District still received a gift of substantial value.

The District contends there is no conflict of interest here because the decision to purchase Promethean products took place long before these conferences. The prohibitions in A.R.S. § 38-504(C) are not contingent on an ongoing procurement process, and District Policy GBEAA specifically prohibits accepting meals or gifts from current vendors. That Promethean waited until after the initial selection process was concluded to lavish gifts on District employees does not make it any less of a conflict of interest for those employees to accept such gifts. It is in Promethean's interests to ensure that TUSD and District employees are pleased; after all, the District has already spent over \$2.4 million purchasing Promethean products and clearly intends to continue doing so.

The District suggests that the employees receiving gifts were not in a position to influence the District's selection or purchasing decisions. The facts belie this assertion. Ed Kowalczyk, Coordinator in the Education Technology Department, was a member of the selection committee and actively planned the Promethean conferences. He was instrumental in selecting Promethean and increasing the use of Promethean products throughout the District. Lisa Long, his supervisor, is the Director of Educational Technology and one of the District's key decision makers. Deputy Superintendent Patti Lopez was one of the most influential administrators in the District. There were also those District employees who, according to Mr. Kowalczyk, "contributed a lot to the use of Promethean boards in the District," "carr[y] a great deal of responsibility and clout," are "strong allies" and "one of our District's decision makers." See TABS 120 and 121.

The District finally argues that its employees did not accept any gifts that were not available to the other conference attendees. That other public employees accepted such gifts and gratuities, in blatant violation of Arizona law, does not excuse the lack of judgment shown by TUSD's employees. The District does not seem to recognize that accepting gifts and gratuities from vendors is improper. It does not matter whether the gifts are from Trillion, a prospective vendor, or from Promethean, a current vendor. Accepting gifts and gratuities violates District policy and Arizona's conflict of interest statutes.

Conclusions

Our investigation has revealed that District employees repeatedly violated state procurement and conflict of interest laws and disregarded District policies. Time after time, District employees had improper contact and communication with current and prospective vendors. This resulted in increased costs, impaired competition, and lost opportunities for the District. Many of the issues identified in this report can be traced to the following systemic problems at the District:

- **Improper Vendor Relations** – District staff did not recognize the potential problems caused by their extensive interaction with prospective and current vendors. Without recognizing the obvious impropriety, District personnel accepted gifts and gratuities from

vendors, including attending a private dinner hosted by a prospective vendor and staying at a resort paid for by another vendor.

- **Extensive Reliance on Consultants** – TTS staff repeatedly treated current and prospective vendors as District consultants, providing them with access and information that impaired the procurement process.
- **Insufficient Planning and Poor Time Management** – The District demonstrated poor planning and time management, postponing actions and delaying procurements until the last minute. In trying to achieve its desired goals, the District repeatedly bypassed procedural requirements, opening the door for fraud, collusion, and other anticompetitive conduct.
- **Poor Procurement Oversight** – District personnel were able to circumvent the school procurement code and District policies without consequences. Goods and services were purchased without competition, without approval, and without adequate oversight or the checks and balances necessary to ensure fair competition.

These problems made it that much easier for vendors to take advantage of the District. In so doing, these vendors also violated state and federal laws. Trillion and ERC harmed competition when they colluded to ensure each would secure a District contract, violating state antitrust laws, the School Procurement Code, and USAC's E-Rate Program Rules. ERC was paid \$39,095 for contracts that were not properly procured and for which it produced very little. Trillion also colluded with TTS staff, violating the School Procurement Code, to gain an advantage over competing vendors. Logical Choice similarly violated the School Procurement Code and federal regulations when it invoiced the District for open market items. As a result, Logical Choice was paid at least \$342,711.98 for open market items without any competitive purchasing process at all.

This is not a case of one rogue employee and a dishonest vendor corrupting a single District procurement. As set forth above, multiple District employees and administrators took part in these activities, and others looked the other way while District policies and state and federal laws were ignored. Our investigation has revealed pervasive and continuing problems with the District's procurement activities and vendor relations, which have allowed vendors such as those identified here to improperly profit from the District's shortcomings.